



**National Cable & Telecommunications Association**  
25 Massachusetts Avenue, NW – Suite 100  
Washington, DC 20001  
(202) 222-2300  
[www.ncta.com](http://www.ncta.com)

**Steven F. Morris**  
Vice President and Associate General Counsel  
  
(202) 222-2454  
(202) 222-2446 Fax

March 25, 2011

**EX PARTE**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC, 20554

**RE:   *Broadband Pole Attachments, WC Docket No. 07-245*  
      *National Broadband Plan, GN Docket No. 09-51***

Dear Ms. Dortch:

On March 24, 2011, Jennifer McKee and Steve Morris of the National Cable & Telecommunications Association (NCTA), and Paul Glist of Davis Wright Tremaine LLP, met with Angela Kronenberg, Legal Advisor to Commissioner Clyburn, and Brad Gillen, Legal Advisor to Commissioner Baker to discuss the Commission's Further Notice of Proposed Rulemaking in WC Docket No. 07-245 (*Further Notice*).

NCTA expressed strong support for the proposal in the *Further Notice* to promote broadband deployment by allowing telecommunications carriers, including incumbent local exchange carriers, to attach to poles at rates, terms, and conditions comparable to those available to cable operators under the formula contained in Section 224(d) of the Act. We also expressed support for the proposal in the *Further Notice* to promote broadband deployment by adopting procedural requirements with respect to the make-ready process.

In both meetings we discussed proposals regarding the use of penalties to address "unauthorized" attachments. Consistent with NCTA's comments in response to the *Further Notice*, we explained that penalties are not needed to incent attaching entities to comply with existing permitting requirements.<sup>1</sup> NCTA's comments explained that the current regime, which permits utilities to impose up to five years of back rent, "creates strong additional incentives for procedural regularity in attachment practices, while preventing utilities from converting occasional liquidated damage provisions into large and unregulated cash cows."<sup>2</sup> Our comments

---

<sup>1</sup> Comments of the National Cable & Telecommunications Association, WC Docket No. 07-245 (filed August 16, 2010) at 42 (NCTA Comments).

<sup>2</sup> *Id.* at 44.

also demonstrated that claims by utilities regarding the scope of unauthorized attachments “are contradicted by evidence submitted by other commenters at earlier stages of this proceeding, as well as by statements made by these same utilities to state regulators.”<sup>3</sup> In particular, the comments identified filings by Comcast and the Florida Cable Television Association demonstrating that utilities often overstate the extent of unauthorized attachment and that utilities themselves are often the cause of violations.<sup>4</sup>

In the meetings, we also discussed the proposal in the *Further Notice* to incorporate “the system of penalties instituted by the Oregon Commission” for reducing unauthorized attachments.<sup>5</sup> Consistent with NCTA’s comments, we explained how the initial penalty regime established in Oregon “led to massive costly disputes among attachers and pole owners” and that Oregon eventually “reduced its penalties substantially” and “instituted a 60 day grace period for attachers to correct problems.”<sup>6</sup> We also encouraged the Commission to limit any penalty regime solely to unauthorized attachments, i.e., attachments made without a permit, and not to apply it in cases where the attachment is made pursuant to a permit but is subsequently alleged to be in violation.

Please do not hesitate to call should you have any questions regarding this matter.

Respectfully submitted,

**/s/ Steven F. Morris**

Steven F. Morris

cc: A. Kronenberg  
B. Gillen  
Z. Katz  
S. Gillett  
C. Shewman  
J. Prime  
B. Dever  
J. Miller

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 44-45.

<sup>5</sup> *Further Notice* at ¶ 96.

<sup>6</sup> NCTA Comments at 48.